



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

September 8, 2015

Mr. Jeffrey Bringle
Rt. #12, Box 3465
Virginia Street
Columbus, In 47203

Re: Formal Complaint 15-FC-217; Alleged Violation of the Access to Public Records Act by Bartholomew Superior Court No. 2

Dear Mr. Bringle,

This advisory opinion is in response to your formal complaint alleging Bartholomew Superior Court No. 2 violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Court has responded to your complaint via Judge Kathleen Tighe Coriden. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 29, 2015.

BACKGROUND

Your complaint dated July 30, 2015, alleges Bartholomew Superior Court No. 2 ("Court") violated the APRA by denying you access to public records by putting the records in a format that was not acceptable.

On May 6, you hand-delivered a request for public records to the Bartholomew Superior Court 2 office. You were referred to the IT department and told to bring a flash drive. You delivered the flash drive on May 7. On May 9, you were told the flash drive was broken and you subsequently provided a new one on May 11. You were then given two downloads of the requested file, in WAV format and WMA format.

On June 10, you requested different information, and were given the files on a flash drive on June 16. However, these files were in DCR format, and would not play on your computer and you were not able to convert the file to another format. You informed the Chief Court Reporter that this format did not work for you and requested another. However, when you received another flash drive with files on June 23, the files were still in DCR format, which you were unable to access.



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

On August 6, Judge Coriden responded to your complaint. She contends that you failed to inform the Court that you could not open the files and that the first time the Court learned of this fact is in your formal complaint.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Bartholomew County Court is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Court’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

The APRA requires a public agency to make reasonable efforts to provide electronic records in a format accessible to the requestor. See Ind. Code § 5-14-3-3(d). Reasonableness takes into account the amount of time necessary and the cost of converting files to an accessible format. There is an issue of fact as to whether the Court was made aware that you needed WMA files as a matter of preference or because you could not read the DCR files. I cannot necessarily address matters of fact as I do not take testimony or evidence under oath or hold evidentiary hearings.

The Court has stated that it was unaware that you were unable to read the DCR files and notes that the staff consists largely of lay people who are unaware of certain aspects of computing that you may take for granted. If you did bring the formal issue to their attention, it appears as if they have the capability of converting it to a commonly used format. If this is the case, they should do so as an accommodation.

The Court has invited this Office to make any suggestions to improve public access at the Bartholomew County Courts. I respectfully offer the following comments: As for the request itself, the Indiana judiciary has the authority to establish Trial Rules to “govern the procedure and practice in all courts of the state of Indiana in all suits of a civil nature whether cognizable as cases at law, in equity, or of statutory origin. They shall be construed to secure the just, speedy and inexpensive determination of every action”. Indiana Trial Rule 1. Public access requests, however, are mutually exclusive to your status as a litigant or an interested third-party.



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

Your request was conspicuously marked as a public records request and was not served upon the Court in your capacity as a defendant or litigant. The Court appears to have integrated your request into the criminal proceeding *sua sponte*. While your records request was not denied per se, the APRA does not contemplate such an action. In effect, the Court Order stated you must submit pleadings pursuant to local rules. You did not submit a pleading, however. Access to public records requests served upon the Court is not a pleading. I encourage the Court to treat public access requests not as a discovery request under the trial rules or a motion to produce documentation.

This Office has stated on several occasions the Public Access Counselor will not interfere on the judiciary's sovereign jurisdiction to adjudicate discovery requests under the trial rules. However, because it was submitted as an APRA request, it falls outside the scope of trial procedure and the judiciary is subject to the APRA as if it were any other public agency. See Ind. Code § 5-14-3-2(n)(2)(c).

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Hon. Kathleen Tighe Coriden